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**IN THE
COURT OF APPEALS OF INDIANA**

PAUL WAGNER,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0611-CR-1046
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Evan Goodman, Judge
Cause No. 49F15-0606-CM-110379;
49F15-0605-FD-79486

July 20, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Paul Wagner (Wagner), appeals his conviction for theft, a Class D felony, Ind. Code § 35-43-4-2, and resisting law enforcement, a Class A misdemeanor, I.C. § 35-44-3-3.¹

We affirm.

ISSUE

Wagner raises two issues on appeal, which we consolidate and restate as the following single issue: Whether the State presented sufficient evidence to sustain Wagner's theft and resisting law enforcement convictions.

FACTS AND PROCEDURAL HISTORY

On May 4, 2006, at approximately 3:00 a.m., Candie Robinson (Robinson) was asleep in her eastside Indianapolis home. She was awakened by the sound of her dog barking. Robinson looked out her window and saw a man, later identified as Wagner, in the back seat of her Chevrolet Blazer. She ran downstairs and saw Wagner pulling a speaker out of her Blazer. She asked Wagner what he was doing, but before answering he fled on foot with the stereo he had already removed from her vehicle. Robinson pursued him for ten to twelve minutes, but eventually lost sight of him at approximately 3:20 a.m. near a Village Pantry.

After losing Robinson, Wagner entered the Village Pantry. He got into an argument with an employee who subsequently called the police. Marion County Sheriff Deputy Hopkins (Deputy Hopkins) detained Wagner at approximately 3:37 a.m. At

¹ We note that these charges were consolidated for trial.

approximately 4:13 a.m., Officer Daniel Bain (Officer Bain) with the Indianapolis Police Department was dispatched to Robinson's house on report of theft from a vehicle. Minutes later Robinson arrived with an unidentified officer at the Village Pantry where Wagner was being detained; Robinson identified Wagner as the man she found in her vehicle.

Approximately one month later, on June 15, 2006, at approximately 10:00 p.m., Officer Bain and a colleague were working undercover. The officers' truck was nearly hit by a man on a bike: the man was later identified as Wagner. The officers turned around and pursued Wagner. When they caught up with Wagner, the officers displayed their badges and identified themselves to Wagner. The officers learned Wagner had three open warrants.

Officer Bain instructed Wagner he was under arrest and told him to put his hands behind his back. Wagner attempted to put his hands in his pockets. Officer Bain was able to get Wagner's left wrist in the handcuffs, but Wagner shoved his right hand into his pocket. Officer Bain told Wagner to "stop resisting." (Transcript p. 56). Wagner did not remove his hand from his pocket. Officer Bain responded by taking Wagner to the ground in fear for the other officer's safety. Officer Teverbaugh was standing in front of Wagner and Officer Bain was unsure what, if anything, Wagner had in his pocket. After taking Wagner to the ground Officer Bain was able to handcuff Wagner's right wrist as well. It was later discovered that Wagner had pepper spray in his front right pocket.

On May 8, 2006, the State filed an Information charging Wagner with Count I, theft, a Class D felony, I.C. § 35-43-4-2, and Count II, criminal mischief, a Class B

misdemeanor, I.C. § 35-43-1-2. On June 16, 2006, under a separate cause number, the State filed an Information charging Wagner with Count I, resisting law enforcement, a Class A misdemeanor, I.C. § 35-44-3-3, and Count II, disorderly conduct, a Class B misdemeanor, I.C. § 35-45-1-3. A bench trial was conducted October 3, 2006. The trial court found Wagner guilty of theft, a Class D felony; criminal mischief, a Class B misdemeanor; and resisting law enforcement, a Class A misdemeanor. The trial court also granted the State's Motion to dismiss the disorderly conduct charge. October 17, 2006, the trial court sentenced Wagner to three years for theft, six months for criminal mischief, to be served concurrently, and one year for resisting law enforcement to be served consecutive to the other sentences imposed.

Wagner now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Wagner argues the State presented insufficient evidence to convict him of theft and resisting law enforcement. Specifically, with respect to his theft conviction, Wagner contends there were serious discrepancies between witnesses' testimonies, thus creating a reasonable doubt as to his guilt. Regarding his resisting law enforcement conviction, Wagner claims the State failed to prove beyond a reasonable doubt the forceful resistance requirement of I.C. § 35-44-3-3.

I. Standard of Review

Our standard of review for a sufficiency of the evidence claim is well settled. In reviewing sufficiency of the evidence claims, we will not reweigh the evidence or assess the credibility of the witnesses. *White v. State*, 846 N.E.2d 1026, 1030 (Ind. Ct. App.

2006), *trans. denied*. We will consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences to be drawn therefrom. *Id.* The conviction will be affirmed if there is substantial evidence of probative value to support the conviction of the trier of fact. *Id.* A judgment based on circumstantial evidence will be sustained if the circumstantial evidence alone supports a reasonable inference of guilt. *Id.*

II. *Theft*

Wagner first argues serious contradictions were raised between Robinson's testimony, the probable cause affidavit, and his own testimony as to when the police detained him and what he was or was not wearing at the time. Without reweighing the evidence, our review of the record indicates the probable cause affidavit is consistent with Robinson's testimony: Robinson awoke to find Wagner in her vehicle, removing her stereo; she pursued him on foot, but lost sight of him near a Village Pantry at approximately 3:20 a.m. Wagner testified he was detained near the same Village Pantry at approximately 3:37 a.m. At approximately 4:15 a.m., Robinson identified Wagner as the man who had been inside her vehicle earlier that morning. Wagner is asking us to reweigh the evidence and assess the witnesses' credibility. We decline this invitation, as it is not within the purview of our review. *See White*, 846 N.E.2d at 1030.

III. *Resisting Law Enforcement*

Additionally, Wagner argues the State failed to prove beyond a reasonable doubt that he resisted law enforcement. Specifically, he contends he did not exercise the requisite force necessary to sustain a conviction for resisting law enforcement. To

convict Wagner of Resisting Law Enforcement as a class A misdemeanor the State was required to prove beyond a reasonable doubt that Wagner (1) knowingly or intentionally; (2) *forcibly* resisted, obstructed, or interfered; (3) with a law enforcement officer; (4) while the officer was lawfully engaged in the execution of his duties as an officer. I.C. § 35-44-3-3(a) (emphasis added).²

Our supreme court has made clear that, under I.C. § 35-44-3-3, any action to resist must be done with force. *Spangler v. State*, 607 N.E.2d 720, 724 (Ind. 1993) (reversing defendant’s conviction for resisting law enforcement because there was insufficient evidence of force where defendant merely resisted service of process by vehemently refusing to accept service and turning and walking away). A defendant “forcibly resists” law enforcement when “strong, powerful, violent means” are utilized to evade an officer’s lawful exercise of his duties. *Id.* at 723. Therefore, “some form of violent action toward another” is required, and if a defendant does nothing more than stand his ground, this requirement is not satisfied. *Id.* at 724. In *Bringle v. State*, 745 N.E.2d 821, 827 (Ind. Ct. App. 2001), *trans. denied*, this court upheld the trial court when Bringle tried to keep his wrists from the deputies as they attempted to place handcuffs on him.

Similar to *Bringle*, in the instant case Wagner was told he was under arrest and directed to put his hands behind his back. Instead Wagner attempted to put his hands in his pockets. Officer Bain was able to cuff Wagner’s left wrist, but Wagner shoved his

² Wagner was charged as follows:

On or about [June 16, 2006, in Marion County, State of Indiana, the following named defendant [Wagner], did knowingly forcibly resist, obstruct, or interfere with [Officer Bain] . . . a law enforcement officer with the Indianapolis Police Department, while said officer was lawfully engaged in the execution of his duties as a law enforcement officer. (Appellant’s App. p. 61).

right hand in his pocket. Officer Bain had to perform an arm-bar take down in order to place Wagner in handcuffs. Thus, as we refrain from reweighing the evidence, we find the State proved the requisite “force” requirement of I.C. § 35-44-3-3.

CONCLUSION

Based on the foregoing, we find that the State presented sufficient evidence to sustain Wagner’s convictions for theft and resisting law enforcement.

Affirmed.

NAJAM, J., and BARNES, J., concur.